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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/159489

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 01, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's request for replacement FS benefits when Petitioner applied for these benefits outside the 10 day time limit.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Pang Thao-Xiong  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner suffered a power outage from June 30, 2014 through July 1, 2014.

3. On July 18, 2014 Petitioner submitted her application for replacement FS benefits due to the power outage. Petitioner submitted verification of the power outage from WE energies with her application.
4. On July 22, 2014 the agency denied Petitioner's application for replacement FS benefits because the application was not made within 10 days of the power outage.
5. On August 1, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

### **DISCUSSION**

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FS with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5. A household misfortune includes, but is not limited to, a disaster, fire or flood, or like event causing destruction of food. 7 C.F.R. § 274.6(f)(2). Finally, the agency must determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 7 C.F.R. § 274.6(f)(2).

This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit.

7 C.F.R. § 274.6(f)(2). If a person reports a household misfortune to the agency within the 10 day timeframe, the person has an additional 10 days from the date of that report to provide a signed statement attesting to the household's loss. 7 C.F.R. § 274.6(a)(4)(ii).

The issue is whether Petitioner's application for replacement FS benefits was timely. Petitioner's household misfortune was a power outage that occurred June 30, 2014 – July 1, 2014. Petitioner did not report this household misfortune until July 18, 2014. This is beyond the 10 day statutory time limit.

Petitioner argued that she did not know that replacement FS benefits were available until she watched FOX 6 news. The news said that she needed verification of the power outage, so she got verification and applied. She said that she did not know about the 10 day time limit. Petitioner also stated that she waited to apply until she had verification of her power outage from WE energies. The agency correctly points out that the letter from WE energies is dated July 10, 2014, which is within the 10 day time limit. There is nothing in the statute that requires the agency to inform Petitioner of the 10 day time limit. However, Petitioner also did not contact the agency until after her ten day limit had expired. Had she contacted the agency she could have orally reported her misfortune and received an additional 10 days for the verification. Regardless, her request was not timely and therefore did not the statutory requirements for replacement FS benefits.

### **CONCLUSIONS OF LAW**

The agency correctly denied Petitioner's application for replacement FS benefits.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of September, 2014

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 8, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability